



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-924]

Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On January 24, 2013 the United States Court of International Trade ("CIT") sustained the Department of Commerce's ("the Department") results of redetermination, pursuant to the CIT's remand order, in Fuwei Films (Shandong) Co., Ltd. v. United States, Slip Op. 13-10 (CIT 2013).¹

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) ("Diamond Sawblades"), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's PET Film Final Results² and is amending the final results with respect to Fuwei Films (Shandong) Co., Ltd. and Shaoxing Xiangyu Green Packing Co., Ltd.

EFFECTIVE DATE: (February 4, 2013)³

¹ See Final Results of Redetermination Pursuant to Court Remand, Court No. 11-00061, dated October 15, 2012, available at: <http://ia.ita.doc.gov/remands> ("PET Film Final Remand"); see also Fuwei Films (Shandong) Co., Ltd. v. United States, Consol. Court No. 11-00061, Slip Op. 12-69 (CIT 2012) ("Remand Opinion and Order").

² See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011) ("PET Film Final Results").

³ Because the deadline, February 3, 2013, falls on a Sunday, the deadline is postponed until the next business day. See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended, 70 FR 24533 (May 10, 2005).

FOR FURTHER INFORMATION CONTACT: Jonathan Hill, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3518.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2012, the CIT remanded three issues with respect to the PET Film Final Results, two of which the Department requested for voluntary remand.⁴ Specifically, the CIT held that: 1) the Department must correct Shaoxing Xiangyu Green Packing Co. Ltd.'s ("Green Packing") per unit water and electricity costs; 2) the Department must reconsider the surrogate value ("SV") for labor expenses; and 3) the Department must clarify or reconsider the SV for polyethylene terephthalate ("PET") chips.

Pursuant to the CIT's remand instructions, the Department re-examined record evidence and made the following changes. First, the Department revised its calculation of Green Packing's reported per-unit water and electricity consumption. To correct the error, the Department has assigned Green Packing's reported electricity factor to the calculated water input, and Green Packing's reported water factor to the calculated electricity input, in the calculation of Green Packing's cost of production.

Next, the Department revised its calculation for the labor SV in accordance with Labor Methodologies by using the reported 2008 ILO Chapter 6A data provided under the International Standard Industrial Classification Revision.3-D standard, the most contemporaneous Chapter 6A data that were available at the time the Department conducted the underlying review.⁵

⁴ See Remand Opinion and Order.

⁵ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

Finally, the Department revised its calculation of the PET chip input SV by using import data exclusively from Indian harmonized tariff schedule category 3907.60.10.

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the “Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s January 24, 2013, judgment sustaining the PET Film Final Remand constitutes a final decision of that court that is not in harmony with the PET Film Final Results. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which each respondent was reviewed.

Amended Final Determination

Because there is now a final court decision with respect to the PET Film Final Results, the revised dumping margins are as follows:

Exporter	Weighted-Average Margin (Percent)
Fuwei Films (Shandong) Co., Ltd.	0.27
Shaoxing Xiangyu Green Packing Co., Ltd.	0.00

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 4, 2013.

Paul Piquado
Assistant Secretary
for Import Administration

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